Court No.2

Writ Petition No.166 (M/S) of 2002.

State of Uttaranchal through
Research Officer, Irrigation Research
Institute, Hydraulies Divison-II,
I.R.I.,Roorkee. ……..… Petitioner.

Versus

Presiding Officer,Labour Court,
Dehradun and another. …… Respondents.

……

Hon'ble P.C.Verma,J.

This petition is directed against the award dated 25.5.2001 passed by the Labour Court in Case No.23 of 2001.

A reference was made to the Labour Court as to whether the termination of the workman/respondent No.2, vide order dated 16.6.1994 was valid and in accordance with the provisions of Industrial Disputes Act or not? If so, to what relief the workman was entitled?

On the receipt of the reference the Labour Court issued notice to the parties and both the parties filed their objections. According to the workman, he worked upto 15.6.1997 continuously from the year 1990. Therefore, he had completed 240 days in the year preceding to the termination order. Thus, the termination amounted to retrenchment was passed in violation of provisions of Sec. 6-N of the Industrial Disputes Act.

According to the employer, the workman did not work after 15.6.1993. He did not come to the duty at his own. The reference was made on the application of the workman himself that his services were terminated on 16.6.1994. Since the workman did not work after 15.6.1993, therefore the finding of the Labour Court that he had completed 240 days in preceding year to the date of termination is evidently incorrect.

The workman in support of his objection examined himself but could not file any documentary evidence. He entered on the witness box and made a statement supporting the averments made in his objection that he has completed 240 days. He has further stated in his statement that no salary receipt was given to him and salary was paid on obtaining his signatures on the blank papers over which the revenue stamps used tobe affixed. He also said that he never signed the attendance register. Supervisors used to mark his presence. He was not aware as to whether his name was continuing in the muster roll or not as it was not shown to him. In his cross-examination, he has denied that he left the service at his own in the year 1993.

On the other hand, the employer has adduced documentary evidence in support of the averments in the objection that the workman did not work after 15.6.1993. He has filed the counter foils upto the year 1994 from the year 1990.

Learned counsel for the State invited my attention to the counter foils on record and indicated that the name of the workman/respondent No.2 finds place on the counter foils from 1992 to 15.6.1993, the date till the workman had worked. Thereafter in the counter-foils from 1st July 1993 till 15.6.1994 the name of the workman does not figure which clearly establishes that the workman did not work. Therefore, the reference for determination before the Labour Court as to whether the termination dated 16.6.1994 was valid and in accordance with the provisions of Industrial Disputes Act or not, was not correct and proper. There was no termination order at all on 15.6.1994 rather the workman worked upto 15.6.1993.

Even before this Court, the workman did not dispute the correctness of the date mentioned in the reference. He contested the case in support of the reference but from the documents on record it is

established that there was no termination on 15.6.1994 but workman/respondent No.2 had worked upto the year 1993. If the termination is taken to be 16.6.1994, then the petitioner has not completed 240 days in the preceding year to the termination order, as he has not worked after 15.6.1993. Therefore, the Labour Court has fell into error in holding that the termination order was in violation of provisions of Section 6-N of the Industrial Disputes Act. The error is apparent on record.

Therefore the writ petition is allowed. The impugned order dated 25.5.2001 is set aside and the reference is accordingly rejected.

(P.C.Verma, J.)

13.5.2002
P.Singh